IN THE HON'BLE HIGH COURT OF JUDICATURE AT BOMBAY, GOA BENCH, AT PORVORIM, GOA

Writ Petition No. 25 /2022

The Village Panchayat of Velsao-Pale-Issorcim ….Petitioner

V/s

The Ministry of Railways & Ors …Respondents

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Place: Porvorim , Goa

Date: 01. 02 .2022

Advocate for the Petitioner

IN THE HON'BLE HIGH COURT OF JUDICATURE AT BOMBAY, GOA BENCH, AT PORVORIM, GOA

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The Village Panchayat
of Velsao-Pale-Issorcim ….Petitioner

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SYNOPSIS AND CHRONOLOGY
OF DATES AND EVENTS

This Writ Petition has been filed by the Village Panchayat of the villages of Velsao, Pale, and Issorcim regarding the illegal constructions and activities being carried out by the Respondent Railway authorities within the jurisdiction of the Panchayat. The activities in question are being undertaken as a part of the project of doubling of the railway line between the cities of Hubli and Vasco. Being the Constitutionally established local governmental body for the villages of Velsao, Pale, and Issorcim, the Petitioner is an important authority as far as development and/ construction activities within these villages are concerned. As per the statutory scheme of the Goa Panchayat Raj Act,

1994, as well as the Goa Land Development and Building Construction Regulations, 2010; no development and/or construction activities can be undertaken within the jurisdiction of a Village Panchayat without written permissions being issued under the specific provisions of the Panchayat Raj Act as well as the Building Regulations. In spite of these provisions, the Respondent Authorities have on multiple occasions carried out development and/ or construction activities in relation to the Railway doubling project without the necessary permissions from the Petitioner authority. Moreover, the Petitioner authority has been completely sidelined in the entire process of planning the railway doubling within the jurisdiction of the Petitioner, contrary to official guidelines of the Ministry of Railways and the provisions of the Indian Railways Code relating to the planning of all railway projects. As the Respondent Authorities have continued carrying out work without permissions from the petitioner; in the face of multiple objections sent to it by the Petitioner; and also a demolition order directing for the removal of certain structures erected, the Petitioner authority has been constrained to approach this Hon'ble Court in this petition.

CHRONOLOGY OF DATES AND EVENTS

Sr. No.	Date	Particulars of events or documents if any	Annexure and Page
1.	2009	Project for doubling the railway line between Hubli and Vasco approved by the Ministry of Railways [Respondent No. 1]	
2.	17.12.2009	The Resp. No. 1 issues a Memorandum regarding land acquisition for railway projects	**Ann. 2,** at 43 - 44
3.	30.01.2021	The Petitioner sends a letter to an official of South Western Railways [the Resp. No. 2], regarding complaints received by villagers about obstacles placed in the Right of Way Area by SWR officials/contractors, within the jurisdiction of the Petitioner authority.	**Ann. 7 Colly,** at 57 - 62
4.	23.06.2021	The Petitioner sends a letter to an official of the Resp. No. 2 as well as an official of Rail Vikas Nigam Limited, the Resp. No. 4, regarding further attempts by Railway authorities to carry out work within the ROW area.	**Ann. 7 Colly,** at 63 - 64

Sr. No.	Date	Particulars of events / documents if any	Annexure and Page
5.	10.08.2021	The Petitioner sends a letter to the Competent Authority & Dy. Collector & SDO – Mormugao, putting forwards its detailed objections regarding the acquisition and use of land proposed by the Ministry of Railways	**Ann. 8 Colly,** at 65 - 68
6.	26.08.2021	Inspection report carried out by the Petitioner in response to complaints made by locals regarding illegal constructions by Railway authorities	**Ann. 4**, at 47 - 52
7.	28.10.2021	The Petitioner sends a letter to the Competent Authority & Dy. Collector & SDO – Mormugao, requests to be given an opportunity to be heard to put forward its objections regarding the proposed land acquisition for the railway project.	**Ann. 8 Colly,** at 69 - 70
8.	30.11.2021	Due to non – response and inaction by the Resp. Railway authorities in removing obstructions and constructions, Petitioner decides to issue demolition notice in relation thereto. Petitioner also resolves to approach this Hon'ble Court regarding the illegal constructions by the Railway authorities.	**Ann. 9,** at 71 - 74
9.	21.12.2021	Petitioner issues demolition notice to official of South Western Railways [the Resp.	**Ann. 5**, at 53 - 54

10.	01.02.2022	Present petition is filed	

Place: Porvorim, Goa
Date: 01. 02 .2022

Advocate for the Petitioner

IN THE HON'BLE HIGH COURT OF JUDICATURE AT BOMBAY, GOA BENCH, AT PORVORIM, GOA

Writ Petition No. /2022

The Village Panchayat
of Velsao-Pale-Issorcim ….Petitioner

V/s

The Ministry of Railways & Ors …Respondents

QUESTIONS FOR DETERMINATION
& LIST OF ACTS & AUTHORITIES

1. Whether the railway authorities are absolved under the Railways Act, 1989 or any other law, from applying for development /building permission relating to the second track through the village of Velsao-Pale-Issorcim without submitting the necessary application for license for the same, and after payment of appropriate charges?

2. Whether the provisions of the Goa Panchayati Raj Act, 1994, brought into force after the 73rd constitutional amendment, and its provisions, can be disregarded by the Railway authorities acting under the Railways Act which was passed in 1989?

3. Whether work carried out by the Railway authorities without a license from the Panchayat under the Panchayat Raj Act, as well as building/development permission under the Goa Land Development and Building Construction Regulations, 2010 is legal?

- The Railways Act, 1989
- The Goa Panchayat Raj Act, 1994
- The Goa Land Development and Building Construction Regulations, 2010

Place: Porvorim, Goa

Date: 01. 02 .2022

Advocate for the Petitioner

IN THE HON'BLE HIGH COURT OF JUDICATURE
AT BOMBAY, GOA BENCH, AT PORVORIM

WRIT PETITION NO._____ OF 2022

IN THE MATTER OF ARTICLES 12, 226, 227 AND 243G OF THE CONSTITUTION OF INDIA;

AND

IN THE MATTER OF THE 73RD CONSTITUTION AMENDMENT AND THE GOA PANCHAYAT RAJ ACT, 1994;

AND

IN THE MATTER OF THE RAILWAYS ACT, 1989 AND THE PROVISIONS THEREIN AND THE REQUIREMENTS OF THE INDIAN RAILWAYS ENGINEERING CODE

AND

IN THE MATTER OF CONSTRUCTION OF RAILWAY TRACK HAVING ROUTE OF *HOSPET - HUBBALI - TINALGHAT - VASCO,* BY THE MINISTRY OF RAILWAYS THROUGH SOUTH WESTERN RAILWAYS

AND

IN THE MATTER OF CONSTRUCTION OF A RAILWAY TRACK IN VILLAGE JURISDICTION WITHOUT DEVELOPMENT PERMISSIONS FROM THE PANCHAYAT

1. **THE VILLAGE PANCHAYAT OF VELSAO-PALE-ISSORCIM,**
   Through its Sarpanch,
   Mr Henrique De Mello, age 54 years,
   Velsao, PO Cansaulim, Goa – 403712.

…**PETITIONER**

V/s

1. **THE MINISTRY OF RAILWAYS,**
   Through its Secretary,
   Rail Bhavan, 256-A, Raisina Road,
   Rajpath Area, New Delhi - 110001.

2. **SOUTH WESTERN RAILWAY,**
   Through its General Manager,
   Gadag Road, Hubli,
   Karnataka - 580020.

3. **RAIL VIKAS NIGAM LIMITED,**
   Through its Addl. General Manager,
   Project-Office, Margao, Goa,
   Block A, 3rd floor 5&6 L&L building,
   Near Matanhy Saldanha
   Administrative Building,
   Margao, Goa - 403601.

4. **THE STATE OF GOA,**
   Through its Chief Secretary,
   Secretariat, Porvorim, Goa - 403521.

…**RESPONDENTS**

***All the above are registered addresses of Parties**.

To,

The Hon'ble Chief Justice
and His Companion Judges,
Bombay High Court at Porvorim, Goa

THIS HUMBLE PETITION OF THE PETITIONER ABOVENAMED.

1. This writ petition is filed by the Panchayat of Velsao-Pale-Issorcim, South Goa, which is the local body elected under the provisions of the Panchayati Raj Act, 1994. The panchayat has deemed it fit and necessary to approach this Hon'ble High Court on the grounds that the respondents, notably the Railway Authorities, have been attempting preliminary works in respect of the laying of a second railway track alongside the existing track which passes through the village, without authority of law.

2. The installation of the second track has become a highly contentious issue which has convulsed the entire state of Goa from time to time and resolution of which is pending before this Hon'ble Court and the Hon'ble Supreme Court. There is, in fact, an explicit recommendation from the Central Empowered Committee (CEC) of the Supreme Court of India that the laying of the double track through the adjacent Bhagwan Mahaveer wildlife sanctuary and national park has to be cancelled on grounds of poor economic viability and excessive environmental destruction and harm to wildlife. There are several petitions also pending before this Hon'ble Court challenging the land acquisition for the second line.

The attempt of the Railway Authorities to commence work despite poor resolution of these issues is leading to constant agitations and protests and has disturbed the normal peace and life of the villagers living within the jurisdiction of this panchayat.

3. The panchayat is approaching this Hon'ble Court on the grounds that under the Panchayati Raj Act, 1994, which was passed pursuant to the 73rd Constitutional Amendment Act, the Respondent Railway Authorities are duty bound to apply to the panchayat for a license to carry out any development work within the jurisdiction of the panchayat.

4. Hence the petition raises important questions of law, and the legal issues are framed in the following terms:

   a) Whether the railway authorities are absolved under the Railways Act, 1989 or any other law, from applying for development /building permission relating to the second track through the village of Velsao-Pale-Issorcim without submitting the necessary application for license for the same, and after payment of appropriate charges?

   b) Whether the provisions of the Goa Panchayati Raj Act, 1994, brought into force after the 73rd constitutional amendment, and its provisions, can be disregarded by the Railway authorities acting under the Railways Act which was passed in 1989?

c) Whether work carried out by the Railway authorities without a license from the Panchayat under the Panchayat Raj Act, as well as building/development permission under the Goa Land Development and Building Construction Regulations, 2010 is legal?

Particulars of the petitioner

5. The Panchayat of Velsao - Pale - Issorcim is an elected and duly constituted local body under the provisions of the Goa Panchayat Raj Act, 1994.

Particulars of the Respondents

6. Resp.No.1 is the Central Government Authority which is behind the railway track doubling project. Resp. Nos. 2 and 3 are agencies who claim to be authorized to carry out the project on behalf of the central government. Resp.No.3 is in fact a contractor. Resp. No. 4 is the State of Goa.

Facts related to the cause

7. The Respondent Railway Authorities have been attempting to construct a second railway track from Hubli to Vasco city for over a decade. The project was initially approved in the year 2009. The railway line on the Karnataka side of the Goa border has been rejected by the CEC, as well as the track proposal on the Goa side. The National Green Tribunal (SZ) has restrained the Karnataka forest authorities from felling any trees in this segment. The CEC's recommendations for cancellation of the second track work is due to its excessive negative impact on the environment and wildlife and

non-existent economic viability. The report of the CEC is pending consideration by the apex court. The work on the Karnataka side is halted by the NGT (SZ) till the Supreme Court considers the report of the CEC.

7A. Subsequent to the filing of this petition, the Supreme Court has by its judgment dated 09.05.2022 rejected the double tracking project in Goa and cancelled the NOC granted to the railway authorities (Respondent Nos.1-3) by the Standing Committee of the National Board for Wildlife to take the extra line through the Mollem National Park and Wildlife Sanctuary.

7B. Petitioner submits that the judgment of the apex court applies not only to the track doubling proposal within the Mollem National Park and the Mollem Wildlife Sanctuary, but it examines, and then rejects, the soundness of the track doubling proposal itself. On both issues, it has ruled against the project and directed it be taken elsewhere. The present track doubling work falling within the jurisdiction of the petitioner panchayat is part and parcel of the rail track doubling proposal and is therefore squarely attracted by the findings and directions of the apex court.

7C. Petitioner craves leave to quote the relevant sections of the judgment that show the Court's inability and unwillingness to accept the economic and technical feasibility of the track doubling proposal both within and outside the protected areas:

"20. The Ministry of Railways or RVNL have failed to provide any substantial basis for the requirement of doubling the railway line by addressing the impact which it would have on the habitat and the damage that it would cause to the environment. RVNL attempted to justify its decision on the ground that there is a likelihood that the requirement of coal and other raw materials would be doubled in the future and proposed project is very much essential for transportation of said goods. Reliance was placed by RVNL on a Parliamentary clarification dated 02.02.2022 and a letter of the Ministry of Power, Government of India to argue that there is no likelihood of shift from coal-based economy. We are in agreement with the CEC that the requirement of coal can be met by utilizing the Krishnapatnam port which is a viable alternative for transportation of coal. The said suggestion would also prevent the degradation of the Western Ghats. Even according to RVNL, traffic on Konkan railway line is frequently dislocated due to landslides, breaches etc. especially during the rainy season. In view of the difficult terrain having sharp curves and gradient as high as 1:37 for the proposed project, any further construction would invite a great disaster in the sensitive areas of Western Ghats as well.

"22……. There is also no credible supporting data for the projections that are given by RVNL relating to the traffic between Karnataka and Goa project for the period 2022-2023 and 2030-2031 and there is no explanation regarding the projected traffic for the next 4-5 years which is required for the completion of the construction of the project. Such data, projections and speculations will have to be supported by an independent and credible source before undertaking any kind of construction activity in the Western Ghats which is world's eight hotspots of biological diversity."

A copy of the order of the Supreme Court dated 09.05.2022 is annexed to this petition as **Annexure A**.

8. The history of the railway project indicates that the first railway line was laid in the year 1867. It was constructed by a private party and has eventually been inherited by default by the central government after 1961. The private railway company was permitted to use their land to erect the single track by the landowners on their lands without acquisition or conveyance on the explicit condition that there would be a permanent right of way (ROW) for those persons residing alongside the track, as their houses faced the track on either side and they could approach these houses only from that side. That ROW has persisted till date and has from time to time been acknowledged by the same railway authorities.

9. A certain portion of land between the track and the houses which was *de facto* the ROW became vested with the village panchayat due to these historical circumstances. While the ROW is under the trusteeship of the Panchayat, the land has continued to remain till this day the private property of the individuals concerned whose ancestors permitted the installation of the track on their lands on these terms. This information can be confirmed by recourse to the Form I&XIV relating to the relevant survey numbers which are in the name of private landowners and not the railways.

10. It is an undisputed fact that the land continued to remain under ownership of the landowners and was never conveyed or acquired. Hence the agreement which has been respected and maintained till

date is that the ROW belongs to the panchayat as it is to be kept free of obstruction to enable common access of the persons of the village to their residential homes which are on both sides of the railway track, historically facing the track.

11. The area under the ROW was demanded and allotted to private owners to be used by villagers as their motor-able ROW and also to accommodate borrow pits intended as vibration dampeners and drains. Changing the land use of this area for track doubling would:

- render houses along the existing railway track landlocked;
- Transmit train vibrations to the houses along the existing railway track causing resultant cracks in walls and eventual destruction of the heritage houses;
- result in flooding of the area;
- enhance considerably the number and movement of coal trains profoundly disturbing the peace of the area;
- bring the trains closer to the residences, causing noise pollution stressful for health, and vibrations;
- lead to cracks in walls of buildings along the track.

12. It appears that the land acquisition for the second track has been challenged by private landowners before this Hon'ble Court inter alia on the grounds that the land below the track and on both sides of the track is the private property of those litigants and has not been acquired.

13. The proposal of the second track brought forward by the respondent railway authorities requires the extinction of the right of way despite the land not being owned by the railways. However, without going into these issues in any further detail and notwithstanding all these issues of history, the petitioner has been concerned at the attitude and actions of the railway authorities in proceeding with their work.

14. Petitioner states that railway construction follows norms laid down under the Indian Railways Engineering Code (IREC). The IREC is issued by the Railway Board and details guidelines for executing railway projects. Petitioner craves leave to rely upon this crucial document, which is binding on the railway engineers, as and when required in these proceedings. As per the Code, not only are detailed surveys to be completed, but consultation with local bodies is also required.

15. The detailed estimate for the section (Tinaighat-Vasco) which includes villages of Velsao, Pale & Issorcim was sanctioned on 11th September 2009. The check-note requires compliance to guidelines of the Railway Board.

16. Paragraph 253 of the Code states: "Before any survey operations are commenced, a notification in accordance with the terms of Section 4 of the Land Acquisition Act is to be inserted in the Local Government Gazette. This should be arranged for by the Railway Administration as promptly as possible after receipt of sanction to the survey, and is independent of the notification published in the Gazette of India by the Railway Board." To the best of the

petitioner's knowledge, no such notification has been published by the Respondents.

17. The Code contains several provisions giving the local administration a significant role in the railway planning and execution process. Paragraph 261 of the Code requires railway authorities to consult local administration during the survey operations, and states that "their opinion should have due weight in determining the most profitable route to be followed." There has been no consultation in this connection by the Respondents with the Petitioner authority.

18. Paragraph 265 of the Code 265 states that "As soon as possible after the field work of a survey has been finished, the local civil authorities should be supplied by the Railway Administration with an Index Plan, and requested to supply data necessary for preparation of estimates of the cost of land for the projected railway." No Index Plan has been supplied to the Petitioner by the Respondents.

19. Paragraph 266 of the Code requires Local Governments or Administration to be supplied with a copy of the project report/construction estimate /index plan and asked to express their views on aspects like alignments/roadways/level crossings etc (relevant extract of IREC enclosed as **Annexure 1)**. A copy of the project report has not been supplied to the Local Government (the petitioner Authority) for their views.

20. Paragraph 305 of the Code requires Railway Authorities to consult local authorities regarding the most suitable alignment of the proposed railway line. There have been no efforts on the part of the Respondents to consult the Petitioner authority as per this provision of the Code

21. In addition, the following documents are required to be prepared by Railway authorities in accordance with the Code:

a) ***Preliminary Investigation*** - Paragraph 206 of the Code states that "In the case of construction of new lines, a preliminary investigation should be undertaken by the Railway Administration concerned to determine how the proposed line will fit in with the general scheme of future railway development. The preliminary investigation should be based on a careful study of information already available from existing maps, published figures of trade and population of the area to be served and financial and statistical data of existing railways in similar country [sic]."

b) ***Techno-economic Survey***: Paragraph 203 of the Code states that "Pre-investment decision investigations may also involve examination of various alternatives including optimisation of existing facilities to decide the best alternative from financial and operating point of view to make an ideal investment decision."

c) ***Traffic Survey Report and Index Map***- Required to be prepared as per paragraph 204(i) of the Code. Paragraph 301 defines Traffic Survey as a "detailed study of the traffic conditions of an area or Section with a view to assessing the traffic prospects and the financial implications of new line projects, restorations, other traffic facilities like gauge conversions schemes, doublings or major line capacity works." Paragraph 302 provides that "The decision on any
new projected Railway system or gauge conversion etc. can be arrived at only after the economic study of the project." At the conclusion of the survey, a Traffic Survey Report is required to be prepared per Paragraph 347, with an accompanying map per Paragraph 348 of the Code.

d) ***Reconnaissance Survey*** - Required to be prepared as per paragraph 204(ii) of the Code, according to which a Reconnaissance Survey relates to "all rough and rapid investigations of an area with a view to determine the technical feasibility and approximate cost of one or more routes for a projected Railway line."

e) ***Preliminary Survey*** - Required to be prepared as per paragraph 204(iii) of the Code, according to which this Survey "consists of a detailed instrumental examination of the route / or routes selected as a result of "Reconnaissance" in order to obtain a close estimate of the probable cost of the projected line.

f) ***Final Location Survey*** - Required to be prepared as per paragraph 204(iv) of the Code.

g) ***Detailed Plan -*** Under Paragraph 453 of the Code, the railway authority must prepare the Plan relating to the chosen alignment. Paragraph 453 states: "On the plan should be shown in detail all features of the country within a distance of 100 metres on each side of the centre line of railway and the boundaries of village lands. The boundaries of different kinds of cultivation, forest, pasture, waste, etc. should also be marked on the plan. The centre line of the proposed line should be indicated by a full red line 0.8 mm in thickness. The position of all masonry centreline pillars and the exact position and description of each bench-mark should be shown."

h) Paragraph 454 requires as follows: "In addition to the foregoing, the following details should be shown, in so far as they lie within a distance of 300 metres on either side of the centre line:

i) Rivers requiring a waterway of 12 metres or upwards.
ii) Important roads with their bridges, culverts, and fractional kilometres-marks.
iii) Canals and large tanks, bunds, bunded-streams and irrigation works.
iv) The outlines of all towns and villages and in the case of large towns, the important streets and thorough fares.
v) The boundaries of States, Local Administration, Divisions and District.
vi) Hill peaks and other important features of the country.

vii) Survey of India Stations.

viii) Camping grounds, rifle ranges, etc.

ix) Reserved Forests.

x) Industrial units existing and/or under construction.

i) ***Index Plan*** - Paragraph 450 of the Code requires the preparation of an Index Plan, showing inter alia all towns, roads, canals, rivers, hills boundaries of States and districts within a distance of 10 kilometres on each side of the railway.

22. To the best knowledge of the Petitioner, no such documents have been prepared. This is concluded from the fact that the land acquisition notices are mostly faulty in their description of the land and what rests on it. A specific objection to this end has been made by the Petitioner in its letter to the Competent Authority & Dy. Collector & SDO – Mormugao, dt. 10.08.2021 (enclosed at **Annexure 8 Colly**).

23. Due to problems emerging from construction of projects in populated areas, the Railway Board issued a detailed memorandum dated 17.12.2009 in which it laid down various procedures for transparent acquisition of land for railway lines. Petitioner craves leave to rely upon the contents of the memorandum, copy of which is hereto annexed to this petition as **Annexure 2**. Suffice it to say that the conduct of the Respondent railway authorities in connection with the present proposal for a second track in south Goa lacks absolute transparency and is a wholly indifferent approach to dealing with affected persons or local bodies.

23A. Petitioner states that in Goa, the Regional Plan prepared under the provisions of the Town and Country Planning Act, 1974, governs the overall development of the territory. In the year 2008, a new alignment connecting Velsao on South Western Railway with the Konkan Railway was discussed with the Town Planning authorities and incorporated in the notified Regional Plan. A copy of the Regional Plan map showing the alignment approved under the statutory Regional Plan bypassing the settled and populated areas of Pale and Cuelim is at **Annexure B**. Petitioner submits that the double track which is subject matter of this petition was never notified in the Regional Plan. The present alignment being pursued by the railways cuts through the homes and properties of the villagers without sanction of the RP 2021.

23B. Petitioner submits that in any event the present alignment being pursued through Velsao village is not in consonance with the RP 2021, and for these reasons as well, it cannot be legally sustained, for no land use can be contrary to the one notified in the RP 2021.

23C. Petitioner states that under the Goa Panchayati Raj Act, the village panchayat is required to prepare development plans for the village areas within its jurisdiction. To the best of petitioner's knowledge, the railways have always been required to respect the need to align its developmental projects with the master plans of the areas through which the railway tracks are proposed, as these will have their own major impact on land use, affecting the lives of citizens of the

area. There are several communications issued in this regard by the Railway Board in this connection (in addition to the memo already annexed to the writ petition at Annexure 2). These communications, which are annexed collectively as **Annexure C Colly** to this petition, are listed hereunder:

a. Communication of the Secretary, Ministry of Urban Development to all Chief Secretaries of States dated May 1, 2017;

b. Communication of the Railway Board to all General Managers of All Zonal Railways dated 17.10.2018. Para 10 of the document notes as follows:

> "Railways/RLDA/IRSDC shall consult urban local bodies/other statutory authorities while approving its plans in terms of power conferred to it as per section 11 of Railways Act, 1989, so that the development in Railway land is harmonious with the surrounding development, generally following the National Transit Oriented Development (TOD). No change in land use is required Pan India by Railways for development of Railway land for commercial use."

c. Communication of the Ministry of House and Urban Affairs to all Chief Secretaries of all States dated 13.11.2019. Para 3 states as under:

> "……All States/UTs are requested to incorporate suitable provisions in the local by-laws/development control norms in congruence with the National TOD policy as

well as the relevant provisions of the Railways Act and thereby facilitating Railways/RLDA/IRSDC to proceed with their development plans in consultation with local bodies/other statutory authorities at the earliest."

d. Communication of the Railway Board dated 30.01.2020 to All GMs of All Indian Railways.

23D. The above communications deal with the necessity of harmonious development of railways development work with development plans of local authorities. It is important to note that these communications are basically in respect of railway land – that is, land owned by the railways. In the instant case, the railways do not own the land and are not able to produce documentation to establish their ownership.

23E. Petitioners submit that the land on which the new track is proposed to be laid not being railway land (i.e., owned by the railways) is all the more reason why the railways must align their proposals with the development plans of local authorities. Further, the railways are duty bound to follow the alignment notified in the Regional Plan 2021. As of now, no such proposed alignment has been notified. Section 11 of the Railways Act does not permit the railways to seriously undermine the land use provided by the Regional Plan, especially when it involves large areas not even under the control or ownership of the railways.

24. Despite the above, the respondent railway authorities have attempted several actions within the village jurisdiction for which they do not have any permissions from the petitioner. They erected a toilet building as well as a laterite stone-cement structure in the ROW area which was objected to by the panchayat (photograph of structures enclosed as **Annexure 3**). An inspection carried out by the Petitioner authority on 26.08.2021 identified the newly constructed structures, and records the statement of the representatives of the Respondent No. 2 that they did not have any permissions from the Village Panchayat to erect the structures. The inspection report is enclosed as **Annexure 4.**

25. The panchayat has subsequently issued a demolition order dt. 21.12.2021 which is pending execution (enclosed as **Annexure 5**). The railways have also erected numerous poles or upright sleepers in some places which affect movement of two and four wheelers within the right of way and these have till now not been removed. Photographs of all these obstructions are annexed and marked as **Annexure 6 Colly**. The railways have attempted to deposit railway construction material including sleepers/ railroad ties along the existing track, but have been forced to remove these and take them back.

26. The panchayat has been corresponding with the railway authorities asking them to produce proof of ownership of these lands covered by the ROW and the railways have not been forthcoming with the information requested. The

correspondence of the panchayat with the railway authorities vide letters dt. 30.01.2021 and 23.06.2021 is annexed hereto as **Annexure 7 Colly**.

27. Objections to the execution of the Project by the Petitioner, the constitutionally designated Local Authority, were placed before the Competent Authority & Dy. Collector & SDO – Mormugao vide letter No VP/VPI/19/MISC/2020-2021/318 dt. 10/8/2021. As no reply was received, a reminder vide letter No VP/VPI/19/MISC /2020-2021/610 dt. 28/10/2021 has also fallen on deaf ears. Both the letters dt. 10.08.2021 and 28.10.2021 are enclosed at **Annexure 8 Colly**.

28. The issue was discussed at the Village Gram Sabha meeting held on 21st November 2021 and it was unanimously resolved that the injustice meted out to the Constitutional Authority be brought to the attention of the Hon. High Court of Bombay at Goa with a petition for appropriate relief. Subsequently, the petitioner has also passed a similar resolution on 30th November 2021, annexed as **Annexure 9**.

29. Every now and then there is a commotion, and law and order problems ensue simply because the railways are assuming that they are not bound by either the Constitution or the provisions of the Railways Act/ the Land Acquisition Act, and that they are not bound by the rights and sentiment of the persons affected by the railway work.

GROUNDS

30. Petitioner is therefore approaching this Hon'ble Court on the following grounds, among others, which emanate from its status as part of State under Article 12 of the Constitution of India:

A. Schedule – I, Section I (1) of The Goa Panchayat Raj Act, 1994 tasks Village Panchayats with the responsibility for *'Preparation of annual plans for the development of the Panchayat area.'*

B. Section 66 of the Goa Panchayat Raj Act, 1994 prohibits any construction within the jurisdiction of a Village Panchayat, without written permission of the Panchayat being accorded under this Section. No work can commence within the village jurisdiction without an appropriate license issued by the panchayat under the provisions of the Panchayat Raj Act, 1994.

C. The Railways have not attempted to acquire the lands falling under the ROW maintained by the panchayat and owned by private parties. Alteration of even a small traditional path anywhere in the village requires permission/NOC from the panchayat. The railways have resisted applying for the same.

D. Regulation 3.2 of the Goa Land Development and Building Construction Regulations, 2010 ["Building Regulations"] requires every applicant seeking development permission under the Regulations to apply to the Village Panchayat in

a prescribed format, seeking a building license from the Panchayat. Further, Regulation 23 requires, *'All Government Departments and Government Undertakings, for construction of buildings/land development including sub-division of land shall inform the Competent Authority in writing of the intention to carry out any development and submit all documents and plans as required under Regulation 3.2 and obtain building license from local bodies'*. Regulations 3.1 and 4.2 prohibit any development activity being carried out without the prescribed permissions being obtained in accordance with the Regulations as well as other relevant legislations.

E. Consequently, any development in the Panchayat jurisdiction requires the permission of the Local Authority (Village Panchayat), as stipulated by the Goa Panchayat Raj Act, 1994 and the Goa Land Development and Building Construction Regulations, 2010.

F. The constructions by the Railway Authorities are in blatant violation of the Panchayat Raj Act as well as the Building Regulations. Neither has any application been made by the Railway Authorities as required by the Panchayat Raj Act [Section 66] and the Regulations [Regulations 3.2 and 23]; nor has any permission and building license been issued by the Petitioner for the construction of such structures within the jurisdiction of the Petitioner authority.

G. Work is being undertaken by the Respondent Railway authorities in violation of provisions of the Indian Railways Engineering Code, issued by the Railway Board and applicable for all railway projects. Not only have the Respondents failed to prepare numerous surveys and plans as required by the Code, but they have wholly sidelined the petitioner authority in the entire process relating to the proposed line, contrary to the Code's requirements in this regard.

H. The 'Hospet-Hubli-Tinaighat-Vasco doubling in Goa' project is being pursued under an assumption that railways have title to around 10 meters on either side of the existing railway track. This is an incorrect assumption or claim.

I. The railways have issued a detailed advisory relating to location of tracks in densely populated areas. However, the Respondents Nos.2 and 3 are not concerned with such advisories and are conducting themselves as lords not bound by either law or courtesy.

J. The Public Accounts Committee of the Lok Sabha dealing with Environmental Management in Indian Railways had recommended a comprehensive environment policy to control air-pollution/noise -pollution /safety measures along railway tracks passing through populated areas. There is no indication or record that appropriate measures have been put in place to address the environmental and social (serious partition of the village) issues that would arise with the execution of the Project.

K. In terms of the statutorily notified Regional Plan 2021 for the State of Goa, it is impermissible for land to be used contrary to the land use specified in the Regional Plan. The double tracking project activities impugned in this Petition are not reflected or marked in the Regional Plan at all, and consequently, are unsustainable.

Source of Information

31. The Petitioner is relying on information which is part of its official records.

Delay, if any, in filing the petition

32. There is no delay in the filing of this petition as the Respondents are only seeking to commence preliminary works.

Representations made

33. The Petitioner has been making representations to the relevant bodies engaged in the work on the second track through the Panchayat jurisdiction. Letters written by the Petitioner dt. 30.01.2021, and 23.06.2021 are enclosed at **Annexure 7 Colly**, and the letters written by the Petitioner dt. 10.08.2021 and 28.10.2021 are enclosed at **Annexure 8 Colly.**

Documents relied upon

34. List of documents to be relied upon is provided in the index.

PRAYERS

35. The petitioner Panchayat is therefore approaching this Hon'ble High Court for the following reliefs:

1. For directions to the Respondents to remove the structures and material placed within the jurisdiction of the Petitioner authority in a time bound manner and report compliance;

2. For a declaration that no construction or development work can be carried out by the Respondent No.s 2 and 3 without a licence of the village panchayat;

3. For costs of this petition;

4. For any other reliefs this Hon'ble Court may be pleased to grant.

INTERIM RELIEF:

5. Pending final hearing of this petition, for an order restraining the Respondents from carrying out any work relating to doubling of the railway track within the jurisdiction of the village of Velsao.

Caveat

36. No notice has been received of lodging a caveat by the opposite parties.

For the above, the Petitioner is very grateful.

Place: Porvorim, Goa

Date: 01.01.2022

Petitioner

IN THE HON'BLE HIGH COURT OF JUDICATURE AT BOMBAY, GOA BENCH, AT PORVORIM

Writ Petition No. 25/2022

The Village Panchayat of Velsao – Pale - Issorcim ….Petitioner

V/s

The Ministry of Railways & Ors …Respondents

VERIFICATION

I, Mr Henrique De Mello, Sarpanch of the Village Panchayat of Velsao-Pale-Issorcim, the petitioner above named do hereby solemnly verify on oath that the contents of paras 1, 2, 5 – 7, 8(p), 9(p), 10, 11, 12, 13(p), 14(p), 15, 16, 17-23, 24-28, 29(p), 31-34, and 36 are true to the best of my knowledge and the contents of paragraphs 3, 4, 8(p), 9(p), 13(p), 14(p), 29(p), 30 and 35 are in the nature of legal submissions which I believe to be true and correct. No part of it is false and nothing material has been concealed therefrom.

Solemnly affirmed at ,
this the

Identified by me Deponent

AFFIDAVIT IN SUPPORT OF THE PETITION

I, Mr Henrique De Mello, Sarpanch of the Village Panchayat of Velsao-Pale-Issorcim, the petitioner above named, do solemnly state on oath as under:

1. I say that I have today filed a Writ Petition for the reliefs sought therein, which has been prepared under the instructions of the Petitioner.

2. The petitioner is ready to pay costs as ordered by the Court, if it is ultimately held that the petition is frivolous or has been filed for extraneous consideration or that it lacks bonafides.

3. The petitioner shall disclose the source of its information, leading to the filing of this petition, if and when called upon by the Court to do so.

4. That the contents of paras 1, 2, 5 – 7, 8(p), 9(p), 10, 11, 12, 13(p), 14(p), 15, 16, 17-23, 24-28, 29(p), 31-34, and 36 of the Petition are true to the best of my knowledge and the contents of paragraphs 3, 4, 8(p), 9(p), 13(p), 14(p), 29(p), 30 and 35 are in the nature of legal submissions which I believe to be true and correct. No part of it is false and nothing material has been concealed therefrom.

5. I say that the documents annexed are true copies of their originals.

Solemnly affirmed at Porvorim, Goa
this the 1st day of February 2022 Deponent